



**Centre for
Human Rights**
UNIVERSITY OF PRETORIA

*Winner of the 2006 UNESCO Prize for Human Rights Education
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Centre for Human Rights
Faculty of Law
University of Pretoria 0002
PRETORIA South Africa

Tel +27 12 420-3034 or 420-3810
Fax +27 12 362-5125
e-mail: chr@postino.up.ac.za
website: www.chr.up.ac.za

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ECOWAS COURT ADJOURNS SENEGAL CASE FOR HEARING ON 4 MAY 2012

Following the decision of the Constitutional Council of Senegal to endorse President Abdoulaye Wade as a presidential candidate for a third term, RADDHO, a non-governmental organisation based in Dakar, Senegal, lodged a complaint to the ECOWAS Community Court of Justice against the government of the Republic of Senegal on 16 February 2012 cited as case no. ECW/CCJ/APP/03/12. In bringing the suit, RADDHO enjoyed the support of the Centre for Human Rights, University of Pretoria, which acted as legal and technical advisor.

In summary, the applicant's prayer to the Court was: first, that the Republic of Senegal be compelled by the Court to suspend the 26 February 2012 presidential election and conduct inclusive and genuine negotiations with the opposition parties, civil society and religious leaders; secondly, that Senegal be ordered by the Court to investigate and prosecute the police officers involved in the use of live of ammunition and other human rights violations during the protests that were held all over the country; and finally, that the Court condemns the acts of intimidation and violence that had been continuously witnessed on journalists and orders the government of Senegal to investigate the attacks. This submission relied on two major instruments namely the African Charter on Human and Peoples' Rights and the ECOWAS Protocol on Democracy and Good Governance.

On 22 February 2012, the Community Court of Justice issued a letter instructing both parties, namely RADDHO and the Republic of Senegal to appear before it on 13 March 2012 for the hearing of the case in open session to which Senegal replied by filing its written submissions on 9 March 2012.

The representatives of the parties at the hearing included Mr Mafall Fall from the Ministry of Economy and Finance, representing the government of Senegal and Mr Horace Adjolohoun representing the Centre for Human Rights. Unfortunately, legal counsel for RADDHO, Me Amadou Kane and RADDHO's

president, Mr Alioune Tine were not present during this hearing. It is important to note that RADDHO's failure to attend the 13 March 2012 session was neither malicious nor intended at any time to disrespect the Court. RADDHO had been experiencing financial obstruction and had literally been sidelined by those who felt threatened by the organisation's leadership in M23. As a result of this, RADDHO could not afford to financially support its trip to Abuja, Nigeria, to prove its case during the session. It was also during this period that RADDHO's president, Alioune Tine temporarily sought refuge in Burkina Faso as tension and threats to his life grew nearing the 25 March run-off.

As a result of RADDHO's absence at the hearing and in accordance with the Court's procedural rules, Mr Adjolohoun could not carry on with the oral proceedings as he lacked written Power of Attorney granting him the authority to represent RADDHO in the absence of its own officials. Consequently, the Court, upon submissions from counsel for the Republic of Senegal, adjourned the matter to 4 May 2012. This date, obviously, is after the run-offs of the presidential election which already took place on 25 March 2012 and in which president Wade was democratically prevented from serving a third-term, as he lost to his former prime minister, Macky Sall. The question that the Court will therefore be faced with during its next sitting on 4 May is whether the applicant's matter has been overtaken by events and now sits as a moot question purely for academic exercise or whether the applicant still has a case against the government.

The Centre for Human Rights is of the view that the arguments presented in the application still remain alive. Indeed, the Court still has a great role to play in articulating over the purpose, meaning and role of the ECOWAS Protocol on Democracy and Good Governance in the sub-region. Further, the Centre believes that the Court needs to make powerful precedent setting pronouncements as regards its position on infringement of human rights during election and campaign periods and the role of each of the ECOWAS member states in protecting rather than violating human rights.

Indeed, the Community Court of Justice should not allow a state party to the two instruments to treat its citizens as Senegal did during the campaign period that saw the loss of approximately twelve lives due to the use of live bullets by the police, numerous injured citizens and others unlawfully incarcerated without ever being formally called to account before a court of law. The election run-offs and the final victory of Mr Macky Sall should not be used as a pretext to disregard the violations that took place since 27 January 2012 in Senegal. The victims of the violations still need to be remedied by the government.

On the other hand, this case presents the Court with an opportunity to make landmark pronouncements that will clearly stipulate what obligations and what rules of the law state parties are required to respect and adhere to during campaign and election periods within their countries in line with the requirements enshrined under both the ECOWAS Protocol on Democracy and Good Governance and the African Charter.

One unprecedented finding through which the ECOWAS Court is expected to bring about a dramatic change in the region is therefore by declaring that non-state actors may call states to the Community Court to account for failure of their domestic organs to abide by their obligations under the ECOWAS

Democracy Protocol, Such a finding by the Court recognising non-governmental organisations in the region as having standing to entertain litigation before the Court on the basis of the same Protocol will be an extraordinary, unmatched precedent. The decision to establish the ECOWAS Court clearly stemmed from ECOWAS member states' commitment to move from an era where states could consider matters such as elections and any related treaties as strictly and purely sovereign issues over which governments had exclusive jurisdiction and discretion. Experience in West Africa and Africa at large has now demonstrated that electoral matters are of direct concern to the citizenry and in fact that voters suffer the greatest loss in electoral disputes.

It is anticipated that come 4 May 2012, RADDHO, will be able to convince the Court to respond to the principal questions posed by this case. For purposes of the rest of the ECOWAS member states who will be running their elections and campaigns in the future as well as other subsequent governments that will in future head Senegal, a precedent ought to be set. A positive pronouncement needs to be obtained not just for the sub-regional members but one that is powerful enough to influence other African states in their electoral practice.

In continued support to RADDHO, the Centre for Human Rights will be represented at the forthcoming session. The Centre has also expressed its appreciation at the welcomed technical and financial support of the Africa Office of the International Commission of Jurists, which has decided to join this initiative.

For further information, please contact:

Prof Frans Viljoen,
Director, Centre for Human Rights
Tel: +27 (0) 12 420 3228

Or Mr. Horace Adjolohoun,
Centre for Human Rights, Faculty of Law, University of Pretoria
Tel: +27 (0) 12 420 3151
Fax: +27 (0) 12 362 5125 Email: horace.adjolohoun@up.ac.za